

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
SAN ANGELO DIVISION

TAM CHI NGUYEN,

PETITIONER,

v.

U.S. DEPT. OF HOMELAND SECURITY,
KRISTI NOEM, in her capacity as Secretary
of Department of Homeland Security; Todd
Lyons in his capacity as the Acting Director
of ICE, JOSH JOHNSON in his capacity as
U.S. Immigration and Customs
Enforcement, Dallas Field Office Director;
PHILLIP VALDEZ, in his capacity as
Warden of the Eden Detention Center.

RESPONDENTS.

Civil Case No.

PETITION FOR A WRIT OF HABEAS
CORPUS PURSUANT TO 28 U.S.C. § 2241,
BY A PERSON SUBJECT TO INDEFINITE
IMMIGRATION DETENTION

PETITION FOR WRIT OF HABEAS CORPUS

1. Petitioner, Tam Chi Nguyen, who has lived in the United States for more than 40 years after his family fled Vietnam and entered the United States as refugees when he was a young child, files this Habeas Petition seeking the Court's urgent intervention. On April 16, 2025, Respondents abruptly and without justification detained Mr. Nguyen for the purported purpose of removing him to Vietnam—a goal the government failed to achieve nearly fourteen years ago when the statutory period of removal expired following the issuance of a final order of removal against him. Now, after fourteen years of freedom and compliance with an order of supervision (OSUP), he was suddenly seized when returning to ICE for the second day in a row for a routine check-in. Despite there being no realistic

chance of removing Mr. Nguyen to Vietnam, he continues to be detained by ICE at the Eden Detention Center.

2. This re-detention¹ is a flagrant and ongoing violation of the Due Process Clause of the Fifth Amendment, the Immigration and Nationality Act, 8 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001), and the required regulatory procedure for re-detention set forth in 8 C.F.R. § 241.13(f),(i). The government's renewed attempt to remove Mr. Nguyen, a pre-1995 arrival from Vietnam, is not merely unlikely; it is a legal fiction contradicted by the government's own prior failure. His confinement, therefore, is not administrative but punitive, indefinite, and unconstitutional. Every additional day of this lawless detention inflicts new and irreparable injury through the profound loss of liberty and the forced separation from his U.S. citizen family. For these reasons, good cause exists for this Court to grant this Petition for a Writ of Habeas Corpus and enjoin ICE from continuing to detain Mr. Nguyen in violation of the constitution and laws of the United States.

CUSTODY

3. Petitioner is currently being detained by and in the physical custody of the U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement (hereinafter "ICE") at the Eden Detention Center in Eden, Texas.² ICE has contracted with

¹ The term "re-detention" is used in this briefing to refer to the detention of an individual who had been on an order of supervision (colloquially referred to as "OSUP") after the expiration of the statutory removal period because removal was not reasonably foreseeable regardless of whether that individual was detained by ICE during the statutory removal period.

² (Pet'r's App. Ex. 7.)

Corrections Corporation of America to house detainees such as Petitioner. Petitioner is under the direct control of Respondents and their agents.

JURISDICTION

4. This action arises under the Constitution of the United States, 28 U.S.C. §2241(c)(1), and the Immigration and Nationality Act (“INA”), 8 U.S.C. §1101 *et seq.* This Court has subject matter jurisdiction under 28 U.S.C. §2241, Art. I §9, cl. 2 of the United States Constitution (“Suspension Clause”); and 28 U.S.C. §1331, as Petitioner is presently in custody under color of the authority of the United States, and such custody is in violation of the Constitution, laws, or treaties of the United States.³

VENUE

5. Pursuant to 28 U.S.C. § 1391, venue is proper in the Northern District of Texas, San Angelo Division, because Petitioner is currently detained in the territorial jurisdiction of this Court, at the Eden Detention Center in Eden, Texas.

PARTIES

6. Petitioner is a native and citizen of Vietnam. Petitioner was ordered removed by an IJ on December 3, 2009. The order became final on March 17, 2011, when the BIA dismissed his appeal.⁴ Accordingly, pursuant to 8 U.S.C. § 1231(a)(1), the statutory 90-

³ See *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001) (“We conclude that §2241 habeas corpus proceedings remain available as a forum for statutory and constitutional challenges to post-removal-period detention.”); *INS v. St. Cyr*, 533 U.S. 289, 301 (2001) (“at its historical core, the writ of habeas corpus has served as a means of reviewing the legality of executive detention, and it is in that context that its protections have been strongest.”); *Clark v. Martinez*, 543 U.S. 371 (2005) (holding that *Zadvydas* applies to aliens found inadmissible as well as removable).

⁴ (Pet’r’s App. Ex. 8.)

day removal period ended on June 15, 2011. Because there has never been a reasonable likelihood of ICE being able to remove him, he spent most of the 14-years since the 90-day removal period expired on an OSUP order.⁵ On April 16, 2025, Mr. Nguyen was suddenly detained by ICE at check in with no violations of the OSUP, no changed circumstances, no chance of removal to Vietnam, and no explanation other than “its time to go home.” After being shuffled through detention centers, Mr. Nguyen was moved to the Eden Detention Center in Eden, Texas, where he is currently detained.⁶

7. Respondent Kristi Noem is the Secretary of Department of Homeland Security. She is responsible for the administration of ICE and the implementation and enforcement of the INA. As such Ms. Noem is the legal custodian of Petitioner.

8. Respondent Todd Lyons is the Acting ICE Director in this position he is responsible for the administration of ICE and the implementation and enforcement of the Immigration & Naturalization Act (INA). As such, Mr. Lyons has ultimate custodial authority over Petitioner in his capacity as Acting Director of ICE.

9. Josh Johnson is the ICE Field Office Director of the Dallas Field Office of ICE and is Petitioner’s immediate custodian.⁷

⁵ As Mr. Nguyen recalls, he was not detained during the statutory 90-day removal period.

⁶ (Pet’r’s App. Ex. 7.)

⁷ See *Vásquez v. Reno*, 233 F.3d 688, 690 (1st Cir. 2000), *cert. denied*, 122 S. Ct. 43 (2001).

10. Respondent Phillip Valdez Warden of the Eden Detention Center where Petitioner is currently detained under the authority of ICE, alternatively may be considered to be Petitioner's immediate custodian.

EXHAUSTION OF REMEDIES

11. Petitioner has exhausted his administrative remedies to the extent required by law, and his only remedy is by way of this judicial action. Furthermore, no statutory exhaustion requirements apply to Petitioner's claim of unlawful detention.

STATEMENT OF THE FACTS

12. Petitioner, Tam Chi Nguyen, a native of Vietnam, has been a lawful permanent resident of the United States for over four decades. He was born in Vietnam on [REDACTED], and as a very young child fled the country with his family in the wake of the war. After a period in a refugee camp, Mr. Nguyen and his family were granted refugee status in the United States in approximately November 1980.⁸ On July 24, 1982, at the age of six, his status was adjusted to that of a Legal Permanent Resident, and he has resided in the United States ever since.⁹

13. On May 7, 2002, Mr. Nguyen was convicted of possession of more than four ounces but less than five pounds of marijuana. The police report from the incident confirms that the amount was approximately four ounces.¹⁰ This conviction forms the sole basis for the charge of removability brought against him by the Department of Homeland Security (DHS).¹¹ On

⁸ (Pet'r's App. Ex. 9.)

⁹ (*Id.*)

¹⁰ (*Id.*)

¹¹ (*Id.*)

September 15, 2006, DHS initiated removal proceedings by filing a Notice to Appear with the immigration court, charging Mr. Nguyen as removable pursuant to 8 U.S.C. § 1227(a)(2)(B)(i) as a noncitizen convicted of a controlled substance offense.¹² Vietnam was the only country designated for his removal during removal proceedings before the IJ.¹³

14. Following the conclusion of his removal proceedings, the IJ ordered Mr. Nguyen removed to Vietnam on December 3, 2009.¹⁴ His appeal to the Board of Immigration Appeals was dismissed on March 17, 2011. This date marked the finality of the administrative order of removal and, consequently, triggered the start of the 90-day removal period as defined by 8 U.S.C. § 1231(a)(1)(B). This initial 90-day period expired on June 15, 2011. The presumptively reasonable six-month removal period, as established by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001), concluded on September 13, 2011. As of the filing of this petition, thirteen years, nine months, and sixteen days have elapsed since the expiration of Mr. Nguyen's statutory removal period.

Mr. Nguyen is detained on April 16, 2025, despite his removal being no more likely on that day than it had been on any of the 5,055 days since the 90-day removal period expired.

15. For nearly fourteen years following the expiration of his removal period, Mr. Nguyen, like the vast majority of Vietnamese nationals ordered removed who arrived in the U.S. before July 12, 1995, has lived under a final order of removal and has been subject to an Order of Supervision ("OSUP") by Immigration and Customs Enforcement (ICE). Under the OSUP, Mr. Nguyen reported to ICE as directed during this time, including periodic check-ins to obtain

¹² (Pet'r's App. Ex. 9.)

¹³ (*Id.*)

¹⁴ (*Id.* at Ex. 8 & 9.)

compliance letters necessary for the renewal of his work authorization application which must be filed with U.S. Citizenship and Immigration Services.

16. The arbitrary and unexpected nature of Petitioner's detention underscores its unconstitutionality. The events began on April 15, 2025, when Mr. Nguyen, acting in good faith, reported to the ICE-ERO sub-office in Oklahoma City to resolve an evidence request related to his work authorization renewal. After being told the officer he needed to see was unavailable, he dutifully returned the next morning, April 16, 2025. Upon being called from the waiting area, he was separated from his wife, who was instructed to wait for him. Moments later, Mr. Nguyen was handcuffed, searched, and abruptly told, "it's time to go home." Without any further information provided to her, an officer eventually informed his wife that he would not be returning. This sudden seizure was followed by a disorienting series of transfers, first to a detention center in Tulsa for four days, then to a facility in Cimarron, Oklahoma, and finally to his current confinement at the Eden Detention Center in Eden, Texas, far from his home and family.

17. Since his abrupt and unjustified detention, Mr. Nguyen has been held at the Eden Detention Center in Eden, Texas. ICE has made no effort to communicate with him regarding the reason for his detention, nor have they taken any discernible steps to secure travel documents for his removal to Vietnam—a process known to be exceedingly complex and historically futile for individuals in his circumstances.

18. As of the date of this filing, Mr. Nguyen remains indefinitely detained without any indication that his removal is reasonably foreseeable. His current detention is therefore in direct violation of the principles set forth by the Supreme Court in *Zadvydas v. Davis*, constituting an unlawful restraint on his liberty.

19. This abrupt and unforeseen detention occurred despite there being no material change in Mr. Nguyen's circumstances or in the long-standing policy and practice of Vietnam regarding the repatriation of pre-1995 arrivals.¹⁵ There is no indication that his removal in the reasonably foreseeable future is any more likely now than it has been at any point in the last fourteen years.¹⁶

20. The Government's inability to effectuate Petitioner's removal is not the result of a temporary bureaucratic impasse but is instead rooted in the long-standing policy of Vietnam. Vietnam has maintained a consistent and well-documented policy of refusing to issue travel documents for the repatriation of individuals who fled the country before the normalization of diplomatic relations on July 12, 1995. This policy stems from the historical context of the Vietnam War and its aftermath, and the Vietnamese government's position on this matter has remained unchanged for decades.

21. The Government's inability to effectuate Mr. Nguyen's removal is further evidenced by the fact that in the years leading up to his detention, ICE never requested that he complete or sign any documentation to facilitate a request for travel documents from Vietnam. Since his current detention began, ICE has made no effort to secure the necessary travel documents.

¹⁵ (Pet'r's App. Ex. 1-2, and 4.)

¹⁶ *Cf. Nguyen v. Hyde*, No. 25-CV-11470-MJJ, 2025 WL 1725791, at *3 (D. Mass. June 20, 2025)(when pressed on evidence specific to changed circumstances of the pre-95 immigrant petitioner in that case, the government only came up with a declaration which the government itself acknowledged was not specific to the petitioner, stating "No doubt the declaration is general and it just says the United States has been successful in removing individuals to Vietnam.").

22. There has only ever been one single impediment to ICE executing the removal order against Mr. Nguyen: Vietnam's longstanding consistent policy of refusing to repatriate individuals who entered the United States prior to July 1995. This, of course, is not a minor impediment. Rather, it has been and continues to be an impossibly insurmountable impediment for nearly every single one of the 8,000 – 10,000 estimated individuals who entered the U.S. prior to July 1995 from Vietnam who currently have final orders of removal. Indeed, it is precisely this impediment that has forced ICE to repeatedly concede there is no reasonable chance of removal orders against pre-1995 entrants from Vietnam ever being executed.¹⁷

23. Mr. Nguyen's detention, initiated on April 16, 2025—more than fourteen years after the statutory removal period expired—is in direct violation of the principles set forth by the Supreme Court in *Zadvydas*. More importantly, for the purposes of this action, ICE failed to adhere to its own mandatory regulations when it re-detained Mr. Nguyen without the process required by the regulations or the existence of changed circumstances specific to Mr. Nguyen of such significance that his removal has suddenly become reasonably foreseeable. This re-detention has been unconstitutional and unlawful since the moment it began on April 16, 2025, when he reported as directed for the second day in a row. Just as he has been doing for years.

¹⁷ See *Trinh v. Homan*, 466 F. Supp. 3d 1077, 1083 (C.D. Cal. 2020) (providing a similar historical overview of removals to Vietnam and the issues surrounding repatriation from those who entered the U.S. prior to July 1995).

24. The reward for reporting as required: ICE detained him at a routine check-in he voluntarily appeared for two days in row. His continued confinement is punitive, not administrative, and is therefore unconstitutional.

Irreparable Harm of Continued ICE Detention

25. Everyday Mr. Nguyen is detained in ICE custody in direct contravention of the statute and U.S. constitution he suffers irreparable harm. From the physical, emotional, and mental toll the complete sudden loss of one's freedom and liberty takes on anyone in the same circumstances, to the loss of income every day he remains in custody.

26. Irreparable harm (alarmingly) is also found in the very real possibility of Mr. Nguyen, a 49-year old former refugee, dying in ICE custody.¹⁸ On May 14, 2025, in an oversight hearing before the House Appropriations Committee, Todd Lyons, acting director of Immigration and Customs Enforcement, testified that 9 people have died in ICE custody since January 20, 2025.¹⁹ A month after this testimony, on June 23, 2025, a 49-year old Canadian citizen died in ICE custody.²⁰ Reports of overcrowding, individuals being detained at facilities that are meant for processing and not set up for detention beyond a few hours are increasing, and other inhumane detention practices continue to rise. Moreover, if ever there was an agency who had demonstrated it could not be trusted to

¹⁸ (See Pet'r's App. Ex. 5 & 6.)

¹⁹ This testimony can be found at the following link: <https://www.youtube.com/watch?v=QvoURiaxBmA>.

²⁰ The ICE press release on this death can be found at the following link: <https://www.ice.gov/news/releases/canadian-national-ice-custody-passes-away>

abide by the law and treat individuals humanely, it has been ICE over the past few months.²¹

OVERVIEW OF POLICY/RELATIONS BETWEEN THE UNITED STATES AND VIETNAM IN THE CONTEXT OF PRE-1995 CITIZENS REPATRIATION

The Importance of July 12, 1995, the 2008 MOU, and a Decade of Consistent Conduct

27. Whether a noncitizen from Vietnam is likely to be removed to Vietnam has long come down to one simple question: did the noncitizen enter the United States before July 12, 1995? If the answer to that question is “yes”, then the answer to the question of whether they are likely to be removed to Vietnam is “No.”²² This is evidenced by historical data and understandings between the two nations.

28. On January 22, 2008, following almost ten years of diplomatic negotiations, the United States and Vietnam signed an “Agreement on the Acceptance of the Return of Vietnamese Citizens”.²³ This agreement, which officially entered into force on March 22, 2008, created the first formal, bilateral framework for the U.S. to repatriate Vietnamese nationals with final orders of removal. However, the scope of this agreement was explicitly and intentionally limited.²⁴ It established a process for the repatriation of only those

²¹ (See Pet’r’s App. Ex. 6 (documenting in detail the many stories of deplorable deteriorating conditions in ICE detention facilities as well as facilities not meant to detain individuals overnight being used to detain noncitizens for days at a time.).)

²² See *Trinh v. Homan*, 466 F. Supp. 3d 1077, 1083 (C.D. Cal. 2020) (providing a similar historical overview of removals to Vietnam and the issues surrounding repatriation from those who entered the U.S. prior to July 1995).

²³ (Pet’r’s App. Ex. 1.)

²⁴ (*Id.*)

Vietnamese nationals who had arrived in the United States on *or after* July 12, 1995.²⁵ This created a clear dividing line between two distinct populations: "post-95" arrivals, who were now subject to a formal removal process, and "pre-95" arrivals, who were not.²⁶

29. The cornerstone of this divided framework is Article 2, Section 2 of the 2008 MOU. This provision states, in unambiguous terms: "Vietnamese citizens are not subject to return to Vietnam under this Agreement if they arrived in the United States before July 12, 1995".²⁷ The selection of this date was not arbitrary; it marks the day the U.S. and Vietnam formally re-established diplomatic relations after decades of hostility following the Vietnam War.²⁸

30. This clause represented a significant diplomatic understanding. It was not merely an administrative guideline or an informal policy; it was a formal "carve-out" memorialized in a bilateral agreement between two sovereign nations.²⁹ This transformed the status of pre-1995 arrivals from individuals who were merely "difficult to remove" to a class of people who were, by mutual agreement, not subject to the repatriation process at all.

31. The written terms of the 2008 MOU were matched by a consistent course of conduct by both governments for nearly a decade. The administrations of both President George W. Bush, who signed the agreement, and President Barack Obama recognized and

²⁵ *Trinh*, 466 F. Supp. 3d at 1081-84.

²⁶ (Pet'r's App. Ex. 1)

²⁷ (*Id.*)

²⁸ *Trinh*, 466 F. Supp. 3d at 1081-84.

²⁹ (See Pet'r's App. Ex. 1-2, & 4.)

honored the protection for pre-1995 refugees. In line with the agreement, the government of Vietnam consistently refused to issue the necessary travel documents for any pre-1995 individual whom the U.S. sought to remove.³⁰

32. This diplomatic reality had direct and predictable consequences for U.S. immigration enforcement. Recognizing the legal and practical impossibility of effectuating these removals, U.S. Immigration and Customs Enforcement (ICE) maintained a consistent, nationwide policy of releasing pre-1995 Vietnamese nationals from custody.³¹ Typically, after a final order of removal was entered, these individuals would be released within the 90-day statutory removal period and placed on OSUP.³² This practice acknowledged the legal constraints on detention authority established by *Zadvydas*. Because removal was not reasonably foreseeable, prolonged detention was not legally permissible.

2017: A decade of stability comes to an end and arbitrary unconstitutional detention of pre-1995 Vietnamese citizens starts

33. A decade of stability and protection established by the 2008 MOU came to an abrupt end in 2017. A dramatic shift in U.S. government policy shattered the long-held understanding regarding pre-1995 Vietnamese refugees, leading to widespread fear in the community, a new wave of prolonged detentions, and ultimately, landmark litigation that

³⁰ *Trinh*, 466 F. Supp. 3d at 1081-84.

³¹ *Trinh*, 466 F. Supp. 3d at 1083.

³² *Id.*

reshaped the legal landscape and produced the very evidence now central to habeas petitions.³³

34. Beginning in 2017, the Trump administration initiated a concerted effort to pressure the government of Vietnam to begin accepting the repatriation of pre-1995 arrivals. This effort was predicated on a new, unilateral reinterpretation of the 2008 MOU by the U.S. government. Contrary to the plain text of Article 2, Section 2 and the consistent practice of the two prior administrations, the Trump administration began to assert that the agreement did not shield individuals with criminal convictions from deportation.³⁴

35. ICE abruptly abandoned its longstanding practice of releasing pre-1995 individuals within 90 days.³⁵ Instead, it began subjecting this population to prolonged and often indefinite detention, with some individuals being held for many months and, in some cases, over a year.³⁶ Furthermore, ICE began to re-detain individuals who had been living peacefully in the community for years, or even decades, under orders of supervision, creating immense turmoil and uncertainty for thousands of families.

The Trinh v. Homan Class Action Lawsuit

36. *Hoang Trinh, et al. v. Thomas D. Homan, et al.* was a nationwide class-action lawsuit filed on February 22, 2018, in the U.S. District Court for the Central District of

³³ (Pet'r's App. Ex. 2 & 4 (discussing impact of changes during the first Trump administration)).

³⁴ *Trinh*, 466 F. Supp. 3d at 1081-84.

³⁵ *Id.* at 1084.

³⁶ *Id.* at 1081 -84.

California. The case, directly challenged the legality of ICE's detention of noncitizens from Vietnam who entered the U.S. prior to 1995.³⁷

37. The plaintiffs' contended that the prolonged detention of pre-1995 Vietnamese immigrants violated both the immigration statute (8 U.S.C. § 1231) and the Due Process Clause of the Constitution.³⁸ The core of their claim was that, despite the administration's new "reinterpretation," the removal of this class of individuals was not reasonably foreseeable.³⁹ This was due to the explicit protective language of the 2008 MOU and Vietnam's continued and consistent policy of refusing to issue the necessary travel documents for their return.

38. The litigation produced several critical developments:

- a. **Government Concession (2018):** In September 2018, after the District Court rejected the government's motion to dismiss the lawsuit, ICE made a pivotal concession. It admitted in court that it was "generally unable to deport pre-1995 immigrants" and agreed to revert to its prior policy of releasing them from custody within 90 days of their removal orders becoming final.⁴⁰ This admission from the government itself is powerful evidence of the non-removability of pre-95 immigrants.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *See generally, id.* (discussing the litigation, parties' positions, historical context of agreements between Vietnam and United States, and other directly relevant issues).

⁴⁰ *Trinh*, 466 F. Supp. 3d at 1088.

b. **Shift in Court's Position (2020):** The legal landscape shifted again by 2020.

The government presented new evidence to the court indicating that Vietnam had begun issuing a "small number" or "small percentage" of travel documents for pre-1995 individuals.⁴¹ Based on this new, albeit limited, evidence of cooperation from Vietnam, the District Court denied the plaintiffs' motion for a class-wide injunction in June 2020.⁴² The court reasoned that because some removals were now occurring, a blanket ruling that the entire class was non-removable was no longer appropriate. Crucially, the court ruled that pre-1995 immigrants would now need to seek release from detention by filing individual petitions.⁴³

39. Following the June 2020 ruling, the parties reached a resolution which imposed several significant obligations on ICE, creating a new accountability framework. As part of this agreement, ICE committed to:

- a. **Quarterly Reporting:** Provide quarterly reports for a two-year period, from late 2021 through late 2023, containing data on all pre-1995 Vietnamese immigrants who had been detained for more than 90 days and, most

⁴¹ The numbers presented by ICE of removals to Vietnam involving pre-1995 immigrants prior to 2020 (which were not subject to judicial oversight) claimed higher numbers of removals for such individuals than the total of 4 that were removed during the 2-year reporting period required as a result of *Trinh*.

⁴² *Id.* at 1081 – 1095.

⁴³ *Cf. Trump v. CASA, Inc.*, No. 24A884, 2025 WL 1773631, at *15 (U.S. June 27, 2025).

importantly, a list of all pre-1995 individuals for whom Vietnam had issued travel documents during that quarter.⁴⁴

- b. Bond Hearings:** Provide bond hearings after 180 days of detention for pre-1995 individuals detained within the geographical boundaries of the U.S. Courts of Appeals for the Third and Ninth Circuits.⁴⁵
- c. Notice of Policy Change:** Provide prompt notice to the plaintiffs' counsel if, within the next five years, ICE changes its official position that pre-1995 immigrants are "generally unlikely to be deported".⁴⁶

40. Simply put, the government's aggressive detention policy ultimately led to a legal challenge that forced it to first concede the general non-removability of the class and then, as part of a settlement, to produce the very data that now forms the evidentiary backbone of any argument that removal remains unforeseeable.⁴⁷ Current habeas petitions, like this one however, are not filed in a vacuum; they are the individualized proceedings that the *Trinh* court envisioned, and with the dispositive data that the *Trinh* settlement produced.

The Current Diplomatic Framework: November 2020 Memorandum of Understanding

41. In the midst of the *Trinh v. Homan* litigation, the diplomatic relationship between the U.S. and Vietnam regarding repatriation underwent its most significant formal change

⁴⁴ (Pet'r's App. Ex. 4.)

⁴⁵ (*Id.*)

⁴⁶ (*Id.*)

⁴⁷ *Trinh*, 466 F. Supp. 3d at 1081 – 1093.

since 2008. In November 2020, the Trump administration succeeded in securing a new Memorandum of Understanding with Vietnam that, for the first time, created a specific process for the removal of pre-1995 arrivals.⁴⁸

42. In 2020, the U.S. and Vietnam signed a new MOU whose stated purpose was to "establish a process of review and issuance of travel documents for Vietnamese citizens ordered removed from the United States... who arrived in the United States before July 12, 1995."⁴⁹ The existence and text of this agreement were not initially made public by the government but were later obtained by immigrant rights advocates through a Freedom of Information Act (FOIA) lawsuit.⁵⁰

43. This new MOU purports to supersede the absolute protection that Article 2, Section 2 of the 2008 MOU had provided. The 2020 agreement explicitly states that its scope applies to pre-1995 arrivals, while post-1995 individuals remain covered by the terms of the 2008 agreement.⁵¹ In effect, the U.S. government achieved its long-sought goal of creating a formal channel to request the removal of this previously protected population. The data shows, however, that the creation of such a process did not result in significantly changing the likelihood of Vietnam actually repatriating more than 99% of the estimated 8,000 to 10,000 pre-95 immigrants living in the United States with final removal orders.

⁴⁸ (Pet'r's App. Ex. 2.)

⁴⁹ (*Id.*)

⁵⁰ (*Id.*)

⁵¹ (*Id.*)

44. A careful reading of the 2020 MOU reveals that its language is aspirational and discretionary.⁵² The following key provisions demonstrate that Vietnam retains the right to refuse repatriation requests, (which it exercises nearly 100% of the time):

- a. **No Binding Commitment:** The central operational clause states that Vietnam's Ministry of Public Security (MPS) "intends to issue travel documents where needed" for eligible individuals. The phrase "intends to issue" is a statement of diplomatic intent, not a legally binding obligation to approve every request. This language preserves Vietnam's sovereign prerogative to make a final determination on each case.⁵³
- b. **Humanitarian Considerations:** The MOU explicitly states that both parties "intend to carry out the removal and acceptance... with consideration of humanitarian and family unity aspects of repatriation." This clause provides Vietnam with a clear, text-based justification for denying a travel document request for an individual who, for example, arrived as a child refugee, has lived in the U.S. for over forty years, has a U.S. citizen spouse and children, and has no remaining family or social ties to Vietnam.⁵⁴
- c. **Non-Automatic Process:** The MOU confirms that the repatriation process is not automatic. For any removal to occur, DHS must first compile and

⁵² *Nguyen v. Hyde*, 2025 WL 1725791, at *4.

⁵³ (*Id.*)

⁵⁴ (*Id.*)

submit a documentation package, and the Vietnamese government must then affirmatively decide to issue a travel document.⁵⁵ The agreement allows Vietnam up to thirty days to respond to a request and even allows for requests for additional information. This multi-step, discretionary process is far from the kind of streamlined system that would make removal a foreseeable certainty.⁵⁶

45. The existence of a new “process” is far from sufficient to justify re-detention under § 241.13(i)(2). More importantly, the existence of such a “process” does not negate the requirement for ICE to comply with the process for re-detention set forth in § 241.13(f),(i)(2). The applicable regulations to be followed before re-detention occurs, like *Zadvydas*, requires an inquiry into the practical *likelihood* of removal, not the mere existence of a diplomatic *process* for requesting it. The 2020 MOU created a door where there was once a wall, but the evidence overwhelmingly shows that Vietnam has kept the door firmly closed to most.

46. Indeed, empirical data provides the most powerful evidence that the 2020 MOU created a process but changed nothing about the practical reality that pre-1995 individuals are not reasonably likely to be removed to Vietnam.⁵⁷ Indeed, the quarterly reports produced by ICE as a result of the *Trinh v. Homan* settlement provide a clear, government-

⁵⁵ (*Id.*)

⁵⁶ (*Id.*)

⁵⁷ (Pet’r’s App. Ex. 2 & 4.)

sourced, and unimpeachable record of the practical reality: the 2020 MOU, while creating a process on paper, has had a statistically negligible effect on the actual removal of pre-1995 Vietnamese nationals.⁵⁸

47. Across the two-year period of ICE providing quarterly reports, the reports revealed that the government of Vietnam issued travel documents for, and ICE subsequently deported, a total of only four (4) individuals who had arrived in the United States before 1995.⁵⁹

48. This number must be contextualized against the estimated size of the population at risk. At the time the *Trinh* lawsuit was filed, advocates estimated that between 8,000 and 10,000 Vietnamese Americans with pre-1995 arrival dates had final orders of removal.⁶⁰ Removing just four individuals from a pool of thousands over a two-year period represents a removal rate that is functionally zero. It does not meet any reasonable definition of the "significant likelihood" of removal required by *Zadvydas*. This is not a matter of slow processing; it is a demonstration of systemic non-removal.

49. In *Nguyen v. Hyde*, a recent case with facts strikingly similar to Mr. Nguyen's, the district court explicitly found that ICE's re-detention of a Vietnamese national without the identification of a changed circumstance specific to the petitioner (only reference to the

⁵⁸ (*Id.*)

⁵⁹ (*Id.*)

⁶⁰ See generally, *Trinh*, 466 F. Supp. 3d at 1081-84.

2020 MOU) was insufficient to demonstrate the type of specific changed circumstance required by § 241.13(i)(2).⁶¹

LEGAL BASIS FOR RELIEF SOUGHT

50. The Immigration & Nationality Act provides that a noncitizen who is “ordered removed” “shall” be removed “from the United States within a period of 90-days.”⁶² The same subparagraph goes on to state that this 90-day period is “referred to as the ‘removal period’” in § 1231.⁶³

51. The 90-day “removal period begins on the latest of the following: (i) The date the order of removal becomes administratively final; (ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court’s final order; (iii) If the alien is detained or confined (except under an immigration process); the date the alien is released from detention or confinement.”⁶⁴

52. Though the statute, as interpreted by *Zadvydas*, allows for detention beyond the 90-day removal period in limited circumstances, the government should—and previously has—released those non-citizens for whom there is “no reasonable likelihood of . . . removal in the foreseeable future.”⁶⁵ That being said, when the statute is “read in light of

⁶¹ *Nguyen v. Hyde*, 2025 WL 1725791, at *4

⁶² 8 U.S.C. § 1231(a)(1)(A).

⁶³ *Id.*

⁶⁴ § 1231(a)(1)(B).

⁶⁵ *Zadvydas v. Davis*, 533 U.S. 678, 690, (2001)

the Constitution's demands, [it] limits an alien's post-removal-period detention to a period reasonably necessary to bring about that alien's removal from the United States."⁶⁶

53. *Zadvydas* explained that continued detention beyond the initial 90-day removal period may not be indefinite.⁶⁷ Rather, *Zadvydas* explained that once 180-days have passed since the removal period began, a noncitizen may bring a habeas petition seeking release from further ICE custody.⁶⁸ If the government seeks to continue to detain the noncitizen beyond this "presumptively reasonable period" the government must produce evidence demonstrating there is a "significant likelihood of removal in the reasonably foreseeable future."⁶⁹

54. In determining the length of a reasonable removal period, the Court adopted a "presumptively reasonable period of detention" of six months.⁷⁰ When detention continues six months after the statutory removal period began, the government bears the burden of disproving an alien's "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future."⁷¹ Moreover, "for detention to remain

⁶⁶ *Id.* at 689.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.* at 701.

⁷⁰ *Id.*

⁷¹ See *Zhou v. Farquharson*, 2001 U.S. Dist. LEXIS 18239, *2-*3 (D. Mass. Oct. 19, 2001) (quoting and summarizing *Zadvydas*).

reasonable, as the period of prior post-removal confinement grows, what counts as the ‘reasonably foreseeable future’ conversely would have to shrink.”⁷²

55. Evidence showing successful repatriation of other persons to the country at issue is not sufficient to meet the government’s burden to establish that an alien petitioner will be deported in the reasonably foreseeable future.⁷³ Rather for the government to meet its burden of showing that an alien’s repatriation is reasonably foreseeable, it must provide some meaningful evidence particular to the individual petitioner’s case.

56. An alien who has been detained beyond the presumptive six months should be released where the government is unable to present documented confirmation that the foreign government at issue will agree to accept the particular individual in question.⁷⁴

57. Once the conclusion is reached that removal is not reasonably foreseeable and the noncitizen is released, there is not a clear statutory basis for ICE to re-detain such individuals.

⁷² *Zadvydas*, 533 U.S. at 701.

⁷³ See *Thompson v. INS*, 2002 U.S. Dist. LEXIS 23936 (E.D. La. September 16, 2002) (government failed to show that alien’s deportation to Guyana was reasonably foreseeable where the government offered historical statistics of repatriation to Guyana, but failed to show any response from Guyana on the application for travel documents that INS and the petitioner had requested).

⁷⁴ See *Aghada v. John Ashcroft*, 2002 U.S. Dist. LEXIS 15797 (D. Mass. August 22, 2002) (court “will likely grant” habeas petition after fourteen months if ICE is “unable to present document confirmation that the Nigerian government has agreed to [petitioner’s] repatriation”); *Zhou*, 2001 U.S. Dist. LEXIS 19050 at *7 (W.D. Wash. February 28, 2002) (government’s failure to offer specific information regarding how or when it expected to obtain the necessary documentation or cooperation from the foreign government indicated that there was no significant likelihood of petitioner’s removal in the reasonably foreseeable future).

58. Assuming *arguendo* (but not in no way conceding) that the regulations allow ICE to re-detain noncitizens for whom there has previously been a determination that removal is not reasonably foreseeable, ICE must follow its own regulations setting forth the process to be followed before re-detention. Specifically, “ICE’s decision to re-detain a noncitizen like [Mr. Nguyen] who has been granted supervised release is governed by ICE’s own regulation requiring (1) an individualized determination (2) by ICE that, (3) based on changed circumstances, (4) removal has become significantly likely in the reasonably foreseeable future.”⁷⁵

59. There is no evidence ICE followed its own regulations in this case. Mr. Nguyen was not interviewed by ICE before being detained. There is no evidence ICE has even started the process for requesting travel documents for Mr. Nguyen from Vietnam—much less that it has obtained such documents.

60. Simply put, ICE did not follow its own regulations for re-detention set forth in § 241.13(f),(i) and, even if it claims it did, there is no evidence of changed circumstances specific to Mr. Nguyen that would make his removal reasonably foreseeable—which is necessary for re-detention under § 241.13(i)(2). Accordingly, the instant petition is being filed seeking the Court to Order Mr. Nguyen’s immediate release from ICE custody.

**PETITIONER’S FIRST CLAIM FOR RELIEF: ICE’S VIOLATION OF ITS OWN
REGULATIONS & STATUTORY VIOLATION**

⁷⁵ *Kong v. United States*, 62 F.4th 608, 619–20 (1st Cir. 2023) (citing 8 C.F.R. § 241.13(i)(2)).

61. Petitioner re-alleges and incorporates by reference all the foregoing paragraphs above.

62. Petitioner's continued re-detention by Respondents without following the process set forth by its own regulations at 8 C.F.R. § 241.13(f),(i) is unlawful as ICE failed to adhere to the revocation procedures set forth at 8 C.F.R. § 241.13(i). As here, "'where an immigration regulation is promulgated to protect a fundamental right derived from the Constitution or a federal statute ... and [ICE] fails to adhere to it, the challenged [action] is invalid.'"⁷⁶ Based on ICE's violations of its own regulations, Mr. Nguyen's detention is unlawful and his release is appropriate, particularly given that his removal is not reasonably foreseeable.⁷⁷

**PETITIONER'S SECOND CLAIM FOR RELIEF: SUBSTANTIVE DUE
PROCESS VIOLATION**

63. Petitioner re-alleges and incorporates by reference all the foregoing paragraphs above.

64. Petitioner's continued detention violates Petitioner's right to substantive due process through a deprivation of the core liberty interest in freedom from bodily restraint.⁷⁸

⁷⁶ *Nguyen v. Hyde*, 2025 WL 1725791, at *5 (quoting *Rombot v. Souza*, 296 F. Supp. 3d 383, 388 (D. Mass. 2017)); see also *Zadvydas*, 533 U.S. at 690 ("The Fifth Amendment's Due Process Clause forbids the Government to 'depriv[e]' any 'person ... of ... liberty ... without due process of law.' Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.").

⁷⁷ See *Rombot v. Souza*, 296 F. Supp. 3d 383, 389 (D. Mass. 2017) (allowing petitioner's motion for release upon a finding that ICE violated its regulations that implicated a fundamental constitutional right).

⁷⁸ See e.g., *Tam v. INS*, 14 F.Supp.2d 1184 (E.D. Cal 1998) (aliens retain substantive due process rights).

65. The Due Process Clause of the Fifth Amendment requires that the deprivation of Petitioner's liberty be narrowly tailored to serve a compelling government interest. While Respondents would have an interest in detaining Petitioner in order to effectuate removal, that interest does not justify the indefinite re-detention of Petitioner, who is not significantly likely to be removed in the reasonably foreseeable future. The U.S. Supreme Court in *Zadvydas* thus interpreted 8 U.S.C. §1231(a) to allow continued detention only for a period reasonably necessary to secure the alien's removal, because any other reading would go beyond the government's articulated interest – to effect the alien's removal.⁷⁹ Re-detention under the regulations requires removal to be reasonably foreseeable under the same standard, and therefore, ICE's re-detention of Mr. Nguyen almost fourteen years after the removal period expired (without his removal due to its impossibility) is unlawful absent a changed circumstances specific to him significant enough to make his removal reasonably foreseeable in the immediate future.

[Nothing further on this page.]

⁷⁹ See *Kay v. Reno*, 94 F.Supp.2d. 546, 551 (M.D. Pa. 2000) (granting writ of habeas corpus, because petitioner's substantive due process rights were violated, and noting that "If deportation can never occur, the government's primary legitimate purpose in detention – executing removal – is nonsensical.").

REQUEST FOR RELIEF

WHEREFORE, Petitioner Mr. Nguyen respectfully requests that this Court grant the following relief:

- 1) Assume jurisdiction over this matter;
- 2) Order Respondents not to transfer the Petitioner out of the jurisdiction of this Court while the Petitioner remains in Respondent's custody during the pendency of these proceedings;
- 3) Grant Petitioner a writ of habeas corpus and direct the Respondents to immediately release Petitioner from custody under reasonable conditions of supervision;
- 4) Order Respondents not to remove Petitioner to any country other than Vietnam as it was the only country previously designated by the IJ during removal proceedings held under 8 U.S.C. § 1229a;
- 5) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and
- 6) Grant any other and further relief that this Court deems just and proper.

RESPECTFULLY SUBMITTED,

/s/ Dan Gividen

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